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REMARKS

Claims 57 and 61-64 are pending in the application. Claims 1-56 and 58-60 have been previously canceled. Claims 57 and 61-64 have been rejected by the Examiner in this Office Action which has been made Final. In response to the Examiner's rejections, Claim 57 has been amended to clarify the scope of the claim and to address one or more ambiguities therein. It is believed that the amendments as presented herein, as well as the remarks below, address each of the Examiner's objections and rejections of the claims. In accordance with 37 C.F.R. § 113 et seq, the Applicant respectfully requests the Examiner consider the amendments and arguments set forth herein, and that the rejection of claims 57 and 61-64 be withdrawn.

Claim Rejections – 35 U.S. C. § 112

The Examiner has rejected claim 57 under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response to this rejection, claim 57 has been amended. Specifically, the phrase "capable of being hand carried by ground personnel" has been deleted. Further, the description of the sensor module has been clarified to distinctly disclose a module *structured and arranged* to be mounted on the rail and connected to the connector. Further, the mounting rail and connector are *structured and arranged* to couple to a plurality of sensor modules. These amendments address the indefiniteness identified by the Examiner.

Claim Rejection – 35 U.S. C. § 103(a)

To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met:

- (a) **there must be some suggestion or motivation**, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;
- (b) there must be a **reasonable expectation of success; and**
- (c) **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The *teaching or suggestion* to make the claimed combination and the *reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.* (emphasis added) MPEP § 2143.

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"The mere fact that the prior art *may* be modified in the manner suggested by the Examiner *does not make the modification obvious* unless the prior art suggest the desirability of the modification." (emphasis added) *In re Fritch*, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992).

Further, federal law is very clear that when applying 35 U.S.C. § 103, the following tenets of patent law must be adhered to:

- (A) The Claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the Claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined. MPEP §2141.01, *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1134 n.5, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir. 1986).

Failure to follow these guidelines, to include any attempt to use the benefit of hindsight to reject an otherwise valid claim, is fatal to the Examiner's rejection.

Claims 57, 61-62 and 64 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelly, U.S. Patent No. 5,986,803 ("Kelly") in view of Kimura, U.S. Patent No. 4,547,815 ("Kimura"). Additionally, claim 63 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelly in view of Kimura as applied to claim 57, and further in view of Hurwitz, U.S. Patent No. 5,568,205 ("Hurwitz"). Applicant respectfully disagrees with and traverses the rejections.

As a threshold issue, the Examiner has failed to acknowledge a fundamental distinction between the invention of the present disclosure and all of the cited references. Specifically, each reference is directed solely toward, and singularly discloses, an *imaging device* or *imaging system component*. In contrast, Applicant's invention is a multi-module sensor array which includes not only imaging modules in the visible and infrared bands, but detection devices operating at RF frequencies and in a nuclear, biological or chemical ("NBC") environment (see e.g. Fig. 1 of the present disclosure). As such, the prior art references, standing alone or in combination, do not teach nor suggest all the claim limitations of the present disclosure. Further, the inventions of the cited references cannot support non-imaging modules for they lack the interface

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mechanisms and software/control features disclosed by Applicant. There cannot be, therefore, the expectation of success required to support a § 103(a) rejection.

With regard to the specific rejection of independent claim 57 cited by the Examiner, while it is true that the cited reference and the present disclosure both include a number of like elements (e.g. a sensor module, a connector, mounting hardware), the plurality of sensor modules disclosed in Column 3, Lines 10-21 of Kelly is clearly limited to imaging and positioning modules. There is no suggestion in Kelly to include the RF and NBC modules disclosed by Applicant. The addition of Kimura does not serve to cure this legal deficiency. As noted by the Examiner, Kimura simply adds a means for mounting various modules, and while the combination of Kelly and Kimura may be technically feasible it is not a combination taught or suggested by either reference. It is impermissible hindsight to suggest otherwise. Also, the combination of Kelly and Kimura does not, and cannot, establish the prima facie case of obviousness required under 35 U.S.C. §103.

It is simply incorrect to suggest that Kelly alone, or in combination with Kimura, includes all the limitations of the present invention. Further, there is no cooperation of structure such as that disclosed by Applicant, therefore there can be no reasonable expectation of success with regard to a combination of non-imaging (e.g. RF and NBC) modules and the Kelly/Kimura inventions. For these reasons, Applicant respectfully suggests the invention of the present disclosure is patently distinct from both Kelly and Kimura, and requests the rejection claim 57 be withdrawn.

Claim 61 is also rejected under 35 U.S.C. § 103(a), based primarily on the disclosure presented in Kelly. Specifically, the Examiner asserts that Kelly, like the present Applicant, discloses a viewfinder and display screen. Claim 61 depends from claim 57, and as such benefits from the arguments set forth above. Additionally, item 132 of Fig. 1 in the Kelly patent is a "beam splitting surface" (Column 5, Line 3), and therefore dissimilar in structure and function from the viewfinder disclosed by Applicant. Stated differently, the structure and cooperation of structure presented by Applicant is patently distinct from the Kelly invention. For these reasons, the rejection of claim 61 should be withdrawn.

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Claims 62 and 64 also depend from claim 57 and therefore benefit from the patentability arguments presented thereto. Further, the power supply of claim 62 is patently distinct from the "battery module" of Kelly in that the common power supply of Applicant's invention may use external power via cabling, or it may be an integral battery source (Paragraph 88, Sentence 6). The power source in Kelly is simply a stand alone battery. Also, the "memory" allegedly taught by Kelly (138 of Fig. 5) is simply a "compact recorder and player" (Column 6, Lines 32-33) which bears little technical similarity to the complex multi-sensor memory required by Applicant's varied data modules. Once again, it cannot be said that Kelly teaches or suggest all the limitations of Applicant's claimed invention.

Finally, with regard to claim 63, the Examiner has rejected this claim as being unpatentable over Kelly in view of Kimura and Hurwitz. As with the other dependent claims, claim 63 "rises and falls" in part with the patently distinct nature of independent claim 57. Further, there is no suggestion in either Kelly or Kimura to combine the elements of Hurwitz, and it is impermissible hindsight to suggest otherwise. Federal law requires a suggestion or motivation to combine references, and without such a suggestion, the combination of otherwise separate and distinct inventions cannot be used as the basis for a § 103 rejection. Applicant respectfully requests, therefore, that the rejection of claim 63 be withdrawn.

CONCLUSION

For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that none of the cited references, nor any combination of the cited references, will result in, teach or suggest Applicant's claimed invention. But even if any such combination might arguably result in such claimed invention, it is submitted that such combination would be non-obvious and patentable.

In view of the above Amendments and Remarks, Applicant has addressed all the issues raised in the Office Action dated 3 April 2006. Applicant acknowledges that the Office Action issued by the Examiner is made Final, and requests the Examiner consider the arguments and amendments set forth herein. In light of these arguments, Applicant respectfully solicits a Notice of Allowance for Claims 57, and 61-64. Should any issues remain, the Examiner is encouraged to telephone the undersigned attorney.

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It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

This Amendment and Response is concurrently filed with a Request for Continued Examination ("RCE"), indicating authorization to charge the fee of \$395 for the RCE to Deposit Account No. 12-0600. It is believed that no further fees are due. However, if any additional fee is deemed necessary in connection with this Response or the accompanying Request for Continued Examination, the Commissioner is hereby authorized to charge Deposit Account No. 12-0600.

Respectfully submitted,

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